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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

NO. 1061

W. W. HINCHCLIFFE,

Petitioner

v.

THE TEXAS COMPANY, OHIO OIL COMPANY, AMERADA PETROLEUM CORPORATION, DEEP ROCK OIL CORPORATION,

Respondents

BRIEF OF THE TEXAS COMPANY, AMERADA PETROLEUM CORPORATION AND DEEP ROCK OIL CORPORATION OPPOSING PETITION FOR WRIT OF CERTIORARI

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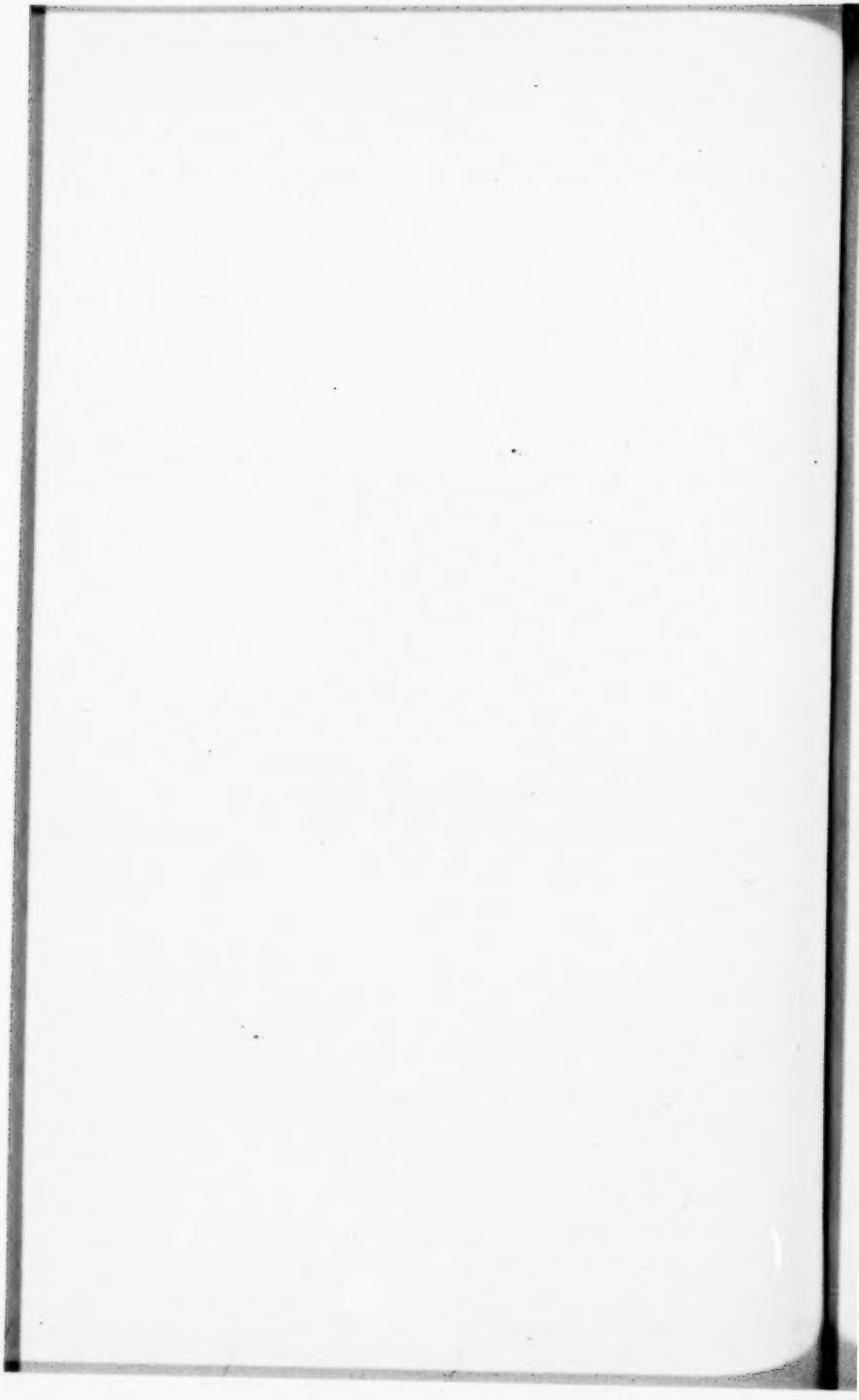

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BRIEF OF THE TEXAS COMPANY, AMERADA PETROLEUM CORPORATION AND DEEP ROCK OIL CORPORATION OPPOSING PETITION FOR WRIT OF CERTIORARI

Respondents, The Texas Company, Amerada Petroleum Corporation and Deep Rock Oil Corporation are herein designated "plaintiffs" to distinguish

them from the other Respondent, Ohio Oil Company, who files a separate brief.

OPINION BELOW

Opinion of the Court of Civil Appeals, Third Supreme Judicial District of Texas, is reported in 182 S. W. (2d) 368. (R. 48)

JURISDICTION

The constitutional questions relied upon by Petitioner to sustain jurisdiction do not do so because they are not real or substantial questions and the decision thereof is not essential to the disposition of the case, for reasons hereinafter stated. *Patterson* v. *Stanolind Oil & Gas Co.*, 305 U. S. 376, 59 S. Ct. 259, 83 L. Ed. 231; *Southwestern Bell Telephone Co.* v. *Oklahoma*, 303 U. S. 206, 58 S. Ct. 528, 82 L. Ed. 751, and other decisions of this court collated in 36 *C. J. S.* 149-150.

STATEMENT OF THE CASE

The Texas Company, Amerada Petroleum Corporation and Deep Rock Oil Corporation as plaintiffs filed this suit in the District Court of Travis County, Texas, against W. W. Hinchliffe, the Railroad Commission of Texas, and its members, as defendants. (R. 1) The petition sought cancellation of an order of the Railroad Commission granting W. W. Hinchliffe a permit to drill well locations described as Nos. 3 and 4 on a 4.1-acre tract in Rusk

County, Texas, East Texas Field, and ancillary injunctive relief. (R. 13-14) The suit was filed pursuant to authority granted by Texas statute.[1]

Ohio Oil Company, as intervenor, filed a petition asserting the existence in itself of a right to sue to cancel the permit order, praying for cancellation and injunction. (R. 26)

Defendant Hinchliffe pleaded as against plaintiffs (R. 20, 26) *but not as against the intervenor* (R. 17, 38) certain special pleas (R. 22-26), to which said plaintiffs directed certain special exceptions (R. 33-36), which were sustained by the trial court. (R. 38-39) This is the particular ruling which the petition for writ of certiorari alleges as an infringement of Hinchliffe's rights under the Fourteenth Amendment, United States Constitution.

Respondent Ohio Oil Company, the intervenor, did not present exceptions to Hinchliffe's pleading and was not involved in that ruling; and such ruling, which is the basis of the petition for writ of certiorari, did not prevent Petitioner from pleading or proving such matters defensively to the suit of Ohio Oil Company.

The Railroad Commission's well spacing rule required wells to be spaced not less than 660 feet from other wells and not less than 330 feet from property lines, but provided for exceptions when necessary

[1]Article 6049c, Sec. 8, Appendix, p. 20.

"in order to prevent waste, or to prevent the confiscation of property." (R. 5) Both grounds of exception to this rule have a well defined legal meaning under the state law.[2] Petitioner, having two wells on his tract, sought and obtained from the Railroad Commission an order granting him a permit to drill additional wells Nos. 3 and 4, in exception to the fieldwide spacing rule. (R. 14-16) The order granting the permit recited that it was granted on both of the above-mentioned grounds of exception. (R. 14-16)

After trial on the merits according an independent judicial determination of facts from the evidence adduced in court (R. 39), the mode of trial provided by the state law,[3] the trial court awarded The Texas Company, Amerada, Deep Rock and Ohio Oil Company, *each independently of the other*, a judgment cancelling the permit order. (R. 39) Up-

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[2]Meaning of "necessity to prevent confiscation": *Railroad Commission* v. *Gulf Production Co.*, 134 Tex. 122, 132 S. W. (2d) 254, 255; *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Tex. 59, 131 S. W. (2d) 73, 85; *Trapp* v. *Atlantic Refining Co.*, 169 S. W. (2d) 797, 800, and other cases there cited.

Meaning of "necessity to prevent waste": *Railroad Commission* v. *Shell Oil Co.*, 139 Tex. 66, 161 S. W. (2d) 1022; *Railroad Commission* v. *Marathon Oil Co.*, 89 S. W. (2d) 517, 519, writ of error refused; *Stanolind Oil & Gas Co.* v. *Marathon Oil Co.*, 123 S. W. (2d) 911, 914-916, writ of error dismissed; *Trapp* v. *Atlantic Refining Co.*, *supra*.

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[3]*Railroad Commission* v. *Shell Oil Co.*, 139 Tex. 66, 161 S. W. (2d) 1022.

on appeal from said judgment, the Court of Civil Appeals reviewed the transcript of evidence and determined that the evidence established as a matter of law that the permit was not necessary to be granted under either ground of exception to the rule, and was illegally granted; and it accordingly affirmed the trial court's judgment. (R. 48)

Petitioner does not now question the holding that under the state law his permit was illegally granted.

The petition for writ of certiorari asserts both as a basis for jurisdiction and as grounds for relief that Hinchliffe was entitled to plead and prove in bar of the plaintiff's suit certain alleged defenses hereinafter stated, and that the action of the state court in sustaining plaintiffs' special exceptions deprived him of his constitutional rights. If Petitioner were correct, we fail to understand how it could avail him because he did not plead such matters against the intervenor's suit, and revision of the ruling on the exceptions could not affect the judgment recovered by Ohio Oil Company in its own independent right. (See discussion, *infra*, p. 14).

The nature of the alleged defenses which he tried to assert against plaintiffs is stated in the argument, *infra*.

SUMMARY OF ARGUMENT

(1) The first and second of Petitioner's "Reasons Relied on for the Allowance of the Writ," while

presented as federal questions, are not real or substantial.

(2) The third and fourth of Petitioner's "Reasons Relied on for the Allowance of the Writ" involve questions of state law rather than federal questions.

(3) Decision of the alleged federal questions is not essential to the disposition of the case because (a) the rulings complained of do not pertain to the judgment recovered by Ohio Oil Company and (b) each of the rulings presented as federal questions are supported by non-federal grounds adequate to sustain the ruling.

ARGUMENT

I.

The first and second of Petitioner's "Reasons Relied on for the Allowance of the Writ," while presented as federal questions, are not real or substantial.

The first reason relied upon for allowance of the writ (petition, p. 5) is based upon the alleged error of the trial court in sustaining plaintiffs' exception to paragraph X of defendant Hinchliffe's answer (R. 23),and when the two are considered together, it will be perceived that Petitioner's contention is, in brief, that because numerous wells have been

permitted to be drilled under the Railroad Commission's alleged construction of the phrase "necessary to prevent waste," to enforce the spacing rule according to the settled construction thereof by the highest courts of the state would amount to an unlawful discrimination. In other words, Petitioner says he was entitled to prove that the Commission has granted numerous permits under an alleged construction which, if it exists, is contrary to the construction fixed by the decisions of the highest state courts; that because the Commission made mistaken rulings in the past and granted permits illegally Petitioner has a right in law to insist that they do so as to him.

The second reason relied upon by Petitioner for allowance of the writ (petition, p. 6) is based upon the alleged error of the trial court in sustaining plaintiffs' special exception to paragraph XI of defendant Hinchliffe's answer (R. 24), and when considered in connection therewith, the substance of the contention is that Petitioner should have been allowed to plead and prove that the Railroad Commission had previously granted numerous permits to others similarly situated which were not contested by suit to cancel, and under which producing wells have been drilled; hence, that it would discriminate against Petitioner if his illegal permits were set aside. In other words, Petitioner says that inasmuch as others who obtained illegal permits still have them, no one having sued to cancel them, the state courts should not cancel Petitioner's illegal

permits by due application and enforcement of the state laws.

Presumably, all governmental officers may at some time err in their application of the law, just as all courts, state and federal, make errors in the performance of their duties. We feel equally safe in presuming that most laws, state and federal, at some time have been violated, and that some offenders have not been called to account. There is never a perfect administration of justice.

When a mistake of law is made, to someone's advantage, those to whom the law is correctly applied do not receive equal treatment. But this is not discrimination.

If Petitioner were correct in his contention that a mistake in the administration of the law thereafter bars its correct administration, and that a failure to enforce a law as to one bars future enforcement as to others, then it is unlikely that any law could now be correctly administered or enforced.

In *Saunders* v. *Lowry*, (CCA 5) 58 F. (2d) 158, it is held that the fact that others equally guilty of violating the law were not prosecuted would not preclude (under the Fourteenth Amendment) punishment of another, also guilty. The mere failure to prosecute others is not a basis for federal intervention on the ground of denial of due process. *Buxbom* v. *City of Riverside*, 29 F. Supp. 3, 8, citing

Ah Sin v. *Wittman*, 198 U. S. 500, 25 S. Ct. 756; *Home Telephone & Telegraph Co.* v. *City of Los Angeles*, 227 U. S. 278, 33 S. Ct. 312; *Mackay Telegraph & Cable Co.* v. *City of Little Rock*, 250 U. S. 94, 39 S. Ct. 428.

In *People* v. *Montgomery*, (Cal.) 117 Pac. (2d) 437, 446-7, the court held that an instruction in a criminal prosecution to the effect that the violation of the law by others who were not prosecuted would not constitute a defense and should not be considered in reaching a verdict, did not violate the provisions of the Fourteenth Amendment. The court said:

> "... Appellant now in effect argues from this that equal protection should also be extended to any person to enable him to commit a crime on a basis of equality with all other persons. While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society.... Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime...."

Any other rule would work unthinkable results.

Surely this does not present a substantial federal question.

Anyone who is interested and affected by an order of the Railroad Commission is authorized, by the very statute under which this suit was filed, to sue to annul it. Therefore, if Petitioner were interested in or affected by the permits which he asserts that the Commission granted to others under similar circumstances, he had his remedy, and the state courts presumably would have annulled such other permits on the same grounds applied to Petitioner. On the other hand, if he was not interested or affected by them, it would seem that they should have no bearing upon his constitutional rights.

The stricken pleadings did not state whether Petitioner was or was not affected by such other permits. But necessarily, either Petitioner was not affected by them or it was his own fault that he did not sue to annul them.

If there were any discrimination by the Railroad Commission it was in Petitioner's favor and against others similarly situated who were denied permits. The Supreme Court of Texas has held that the settled judicial construction of the exception clause "necessary to prevent waste" is required, not only by other provisions of the rule and the circumstances of its adoption, but also to prevent discriminatory administration of the rule by the Commission. *Railroad Commission* v. *Shell Oil Co.*, 139 Tex. 66, 161 S. W. (2d) 1022, 1025.

However, Petitioner does not contend that the Railroad Commission discriminated *against* him. Nor does he contend that the State courts accorded him any different treatment or applied to him any different rule from that which the courts accord to or apply to others similarly situated.

II.

The third and fourth of Petitoner's "Reasons Relied on for the Allowance of the Writ" involve questions of state law rather than federal questions.

Petitioner's third reason for allowance of the writ (petition, pp. 6-7) is based upon the alleged error of the trial court in sustaining plaintiff's special exception to paragraph XII of defendant Hinchliffe's answer (R. 25), and when considered in connection therewith the substance is that Petitioner should have been allowed to plead and prove that his tract, which was proven productive property, was subject to the rule of capture as a rule of property under the laws of Texas, and that he had no right of ownership in place (note the pleading, R. 25); that under this rule he had a right to protect his property by drilling wells, and unless the wells at issue were permitted the oil in place beneath his tract would be drained by wells of others, in violation of his constitutional rights. (R. 25)

His allegation concerning the law of the state was not only a legal conclusion, and an erroneous

one,[4] but pertains to a question of state rather than federal law. The exception to paragraph XII of Hinchliffe's answer was addressed solely to his allegation of the law of the state, which was clearly unnecessary and improper in a jury case, and of course, that is the only allegation which was struck out by the ruling. The propriety of the ruling in striking this legal conclusion is purely a question of state law. All factual allegations in paragraph XII remained subject to proof. In fact, it was conceded that his tract was proven to be productive (R. 2, 29), and Hinchliffe attempted to establish that his existing wells were insufficient to prevent drainage, and offered testimony; but the Court of Civil Appeals upon reviewing it held the evidence established as a matter of law that his two existing wells were sufficient for that purpose. (R. 49-50) Petitioner does not now question this holding of the Court of Civil Appeals, which completely negatives his contention that his property is being taken in violation of the Constitution.

What Petitioner really seeks is assistance in confiscating oil of others; for inasmuch as his existing wells accord him his full share of the oil, to the same extent that Nos. 3 and 4 will enable him to produce still greater quantities by drainage from others, such others necessarily will be deprived of their share of the oil.

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[4]Petitioner's Brief cites no authorities for his contention that ownership in place is not the law in Texas.

Petitioner's fourth and last reason for allowance of the writ (petition, p. 7) is based upon the alleged error of the trial court in sustaining plaintiff's special exception to paragraph IX of defendant Hinchliffe's answer (R. 22), and the substance of the contention is that plaintiffs should have been allowed to plead and prove that the Railroad Commission had construed the exception clause "necessary to prevent waste" contrary to the judicial construction thereof settled by decisions of the Texas Supreme Court and Courts of Civil Appeals (some of which are cited in footnote 2, p. 4, *supra*) rendered prior to the filing of such plea, and that he was entitled to show as a defense that under the Commission's alleged construction he was entitled to a permit.

Constitutional rights are not even mentioned in this paragraph of the pleading.

If there were such a conflict of constructions as Petitioner contends, what Rule 37 means and which of the two constructions should prevail is purely a question of state law. Even if the state courts had erred in their determination of such question it would not involve discrimination or confiscation in violation of the Fourteenth Amendment to the Constitution. The Texas courts have the final say concerning the meaning of Texas law. *Hotel & Res. Employees', etc.* v. *Wisconsin Employment Relations Board*, 315 U. S. 437, 62 S. Ct. 706, 708.

III.

Decision of the alleged federal questions is not essential to the disposition of the case.

(A) The Rulings Complained of do not Pertain to the Judgment Recovered by Ohio Oil Company

Intervenor Ohio Oil Company recovered judgment in its own right, independently of the plaintiffs' right. (R. 39) The alleged error upon which Petitioner relies for a writ was the ruling upon plaintiffs' exceptions, and in no wise affects the validity of the judgment recovered by Ohio Oil Company cancelling the permit order and enjoining further operations upon the involved locations.

So, what practical result is to be gained by Petitioner's rehearsing this court in the determination of the abstract question whether *plaintiffs' judgment* is erroneous because of the ruling upon *plaintiffs' exceptions* to the answer filed by Hinchliffe as defendant?

Clearly the decision of these questions could not affect the disposition of the case as to Ohio Oil Company; and when its judgment cancelling the permit is thus left undisturbed, the permit is none the less a dead issue, irrespective of whether plaintiffs also were entitled to judgment cancelling it.

For this reason there is a want of jurisdiction in this court. See authorities cited, *supra*, page 2.

(B) Each of the Rulings Presented as Federal Questions Are Supported by Non-Federal Grounds Adequate To Sustain the Ruling.

Paragraph X of the answer, involved in Petitioner's first reason for allowance of the writ, alleges that the Railroad Commission had granted numerous permits solely upon testimony advancing what has come to be known as the "more wells, more oil" theory, which wells have been drilled and are producing, and to enforce the spacing rule (according to the settled state judicial construction of the phrase "necessary to prevent waste") would be confiscatory and discriminatory. (R. 23-24)

The special exception thereto (R. 33-34) is based on two grounds: (a) if defendant were affected by such permits granted to others he possessed the adequate remedy of filing suit to cancel them, hence, the allegations were immaterial; (b) defendant having obtained an invalid permit cannot insist that it be upheld on such basis, because the same argument would be equally applicable to all other operators and would bring about a complete destruction of the spacing rule and its usefulness as a conservation measure.

Paragraph XI of the answer, involved in Petitioner's second reason for allowance of the writ, alleges that the Railroad Commission has previously granted numerous permits to others similarly situated which had not been contested by suits to cancel, and under which producing wells have been

drilled; hence, it would discriminate against Petitioner to cancel his permits (if found to be illegal under the state law). (R. 24) The special exceptions which were sustained to this paragraph were: (No. 3) because the allegations concerning permits granted to others similarly situated is immaterial, and a legal conclusion, no facts being alleged upon which it could be determined whether all the surrounding conditions were the same, and being vague and indefinite in failing to identify such other permits sufficiently to enable plaintiffs to investigate and be prepared to meet the issue with proof (R. 34); (No. 4) the allegation that *plaintiffs* had not filed suits contesting such other permits was immaterial (R. 34); (No. 5) the allegation that cancellation of Petitioner's permits would result in discrimination and confiscation for the reason asserted in said paragraph XI was improper because (a) immaterial, (b) if defendant's permits were shown to be illegal, they should not be upheld on the ground that similar illegal permits had been granted to others because that would result in complete destruction of the spacing rule under which the permit was granted as an exception, and (c) if Hinchliffe was affected by such permits of others he had an adequate remedy by suit to cancel them. (R. 35)

As stated in the opinion of the Court of Civil Appeals in this case, the same contentions had been made and overruled by the Texas courts in earlier cases. (R. 49)

When the court below held Petitioner's pleading

to be inadequate under the state practice from the pleading standpoint, he made no effort to supply the inadequacy by amendment.

As shown, *supra*, p. 10, if Petitioner were interested in or affected by the permits which he claims have been granted to others on the "more wells, more oil" theory, contrary to the settled judicial construction of the phrase "necessary to prevent waste," the state law gave him an adequate remedy by suit to cancel. Pursuit of such other remedy would not lead to the destruction of the spacing rule itself, which forms an essential part of the state conservation program. On the other hand, Petitioner's insistence that his illegal permits be sustained because other illegal permits have been granted and were not attacked, if recognized by the state courts as a defense in a case of this kind, would necessarily preclude all future attempts to enforce the conservation laws against holders of illegal permits, and the recognition of Petitioner's assertion that the permits were sustainable on the "more wells, more oil" theory would result in destruction of the very basis on which the legality of the spacing rule is founded. These grounds of exception represent well established state law, and we respectfully invite this court's consideration of the reasoning of the decisions cited in footnote 2, p. 4, *supra*, settling the state law on the point and presenting reasons of inescapable soundness supporting their conclusion. We especially call attention to the following language of the Supreme Court of Texas in *Railroad Commission* v. *Shell Oil Co.*, 139 Tex. 66, 161 S. W.

(2d) 1022, 1026, 1027, which we quote for this court's convenience:

> "If, however, an exception to prevent waste may be granted on the basis of testimony that is equally applicable to any other field or part of a field subject to the rule—as in the case where the 'more wells, more oil' theory is relied upon—then there is actually no basis in fact for a distinction between cases subject to the general provisions of the rule and cases within the exceptions therein, and the Commission has no real guide or standard at all."
>
> * * *
>
> "If the Commission intended that all should be granted special permits upon request therefor, the general spacing provided for in Rule 37 was useless and should not have been adopted."

Petitioner's constitutional rights are not violated by his failure to amend inadequate pleadings or by the refusal of the state courts to permit him to pursue one course of protection which would result in disaster to the state conservation program, when he had another adequate remedy afforded by the state law which would not impair such program. The rulings which Petitioner presents as federal questions are clearly supported by adequate non-federal grounds.

CONCLUSION

We submit that the petition for writ of certiorari should be dismissed or denied.

If the court sees fit to grant it, we reserve the right to file a further brief on the merits before submission.

WHEREFORE, these Respondents pray that the petition for writ of certiorari be dismissed or denied.

Respectfully submitted,

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